UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

December 22, 1997

Peter M. Zuk, Project Director
Massachusetts Highway Department
Central Artery/Tunnel
One South Station
Boston, MA 02110

re: Central Artery/Tunnel (CA/T) Project
Proposed Treatment Process for Toxicity Characteristic (TC) Soil

Dear Mr. Zuk:

The Hazardous Waste Program Unit of EPA-New England is in receipt of your letter dated December 1, 1997, in which you inform EPA of your intention to implement a process to remove and treat TC-lead contaminated soil from the CA/T Project on a project-wide basis. Implementation of the process is based upon the results of pilot studies performed on 250 cubic yards of TC-lead excavate which successfully demonstrated that all of the TC-lead levels were reduced to levels well below the regulatory limit of 5.0 mg/l. In that letter you state that you intend to treat lead-contaminated soil by applying and mixing a liquid reagent with the TC-soil in order to reduce the leachability of metals by crystal mineralization.

As indicated above, the soil contains lead which may be found at levels that would define it as a hazardous Toxicity Characteristic (TC) waste. The TC rule was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and therefore is implemented by EPA in all states until such time that the states become authorized for the rule. The Commonwealth of Massachusetts will be seeking authorization for the TC rule during 1998. The implications of this on your situation would be that if the process is deemed to need a RCRA Part B permit because of the TCLP test, EPA would be the permit issuing authority in states that do not have TC authorization.

In your correspondence two general treatment scenarios are proposed to implement the previously defined treatment process. These scenarios have been interpreted by the environmental consultants to the CA/T project as being exempt from the RCRA permitting process. The scenarios are as follows: Scenario 1- "Treatment of Confirmed TC-Soil In Situ" proposes to apply the liquid reagent to in-situ soil that exceeds or potentially exceeds the regulatory limit for TC-lead. The reagent will be applied to treat the soil in lifts of 18" to 24" deep. As indicated in the letter, the treatment process occurs almost instantaneously upon application of the reagent and, therefore, when the treated soil is excavated it is no longer considered a RCRA hazardous waste. This treatment scenario, as indicated above, is considered to not need a RCRA permit. EPA agrees with this interpretation since no hazardous waste is being generated under this scenario. Additionally, as indicated in the letter the handling and storage of any treated stockpiled-soil will be done in accordance with the November 1993 Compliance Plan approved by DEP within the AOC ("area of contamination"); Scenario 2- "Treatment of TC-Soil in Tanks and/or Containers" proposes to treat the excavated TC-soil within the identified AOC by applying the reagent to the soil as it is being placed in watertight containers. The treated soil will be stored in the same manner as indicated under Scenario 1. As mentioned previously, this treatment scenario as proposed is considered not to need a RCRA permit. EPA, again, agrees with this interpretation, assuming that the requirements discussed below are met. However, since a hazardous waste is being generated certain generator requirements must in any event be met.

The exclusion from permitting which may apply to your process is found in 40 CFR § 264.1, which states that the requirements of Part 264 - Standards for owners and operators of hazardous waste TSDFs, do not apply to:

> A generator accumulating waste on-site in compliance with 40 CFR § 262.34. In connection with such accumulation, the EPA also has determined that permits are not required for generators treating their hazardous wastes in the generators' tanks or containers in conformance with the requirements of § 262.34 and Subparts I or J of Part 265. See 51 Fed. Reg. at 10168 (March 24, 1986), and 40 C.F.R. § 268.7(a)(4).

In order to qualify for this exemption from the permitting requirement, the waste must be treated by the generator and stored for no more than 90 days. In addition, the waste must be treated within tanks or containers as defined in 40 C.F.R. § 260.10. Finally, all parts of your system involved in storing and treating the waste must meet the requirements of 40 C.F.R. § 262.34 and 40 C.F.R. Part 265, Subparts I or J, and

Subparts AA, BB, and CC. In order to be excluded from the permitting requirement, you need to ensure that all of these requirements are met.

Assuming that you do qualify for the exemption from permitting, you must still meet all applicable generator requirements. In removing any soil which is a hazardous waste, you are considered to be generating a hazardous waste, even if it is then rendered non-hazardous by your treatment. The applicable requirements include obtaining an EPA ID number as the generator of a hazardous waste. 40 C.F.R. § 262.12.

In addition, while the treated soil will be non-hazardous if it does not fail the Toxicity Characteristic, it still must meet all applicable land disposal restrictions (LDR). The current LDR treatment standard for lead for this type of waste is 5.0 mg/l TCLP. As a generator treating wastes subject to LDR, you also will be required to develop and follow a written waste analysis plan pursuant to 40 C.F.R. § 268.7(a)(4).

Although an EPA permit will not be required for the treatment process if you meet the requirements stated above, you are reminded that individual state regulations may be both more stringent and broader in scope than the EPA regulations. Therefore, you will need to contact the state for a determination regarding its views on the regulatory status of the treatment process. Since Massachusetts is authorized for the base RCRA program, which includes sections 261, 262, and 264 of 40 CFR, it maintains the authority to make more stringent determinations regarding exclusions.

In summary we believe for reasons previously discussed that an EPA hazardous waste permit will not be required for the above activity under Scenario 2 if you meet the requirements discussed above. However, the Massachusetts Highway Department will be subject to federal generator requirements, including LDR requirements, and also should contact the MADEP to determine if there are provisions that are more stringent or broader in scope than EPA's.

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Marcy
Gen
Robin } FYI

I spoke w/ Jeff Fowley on 12.9.97. this letter was ok w/ him.
orig - CH Braintree
cc - Regional Policy Committee
Casey Cosbie
subjects: LDR Universal Wastes

Certified Mail - Return Receipt Requested (Z 203 373 649)

December 2, 1997

Mr. Jeffrey Fowley, Associate Regional Counsel
Office of Regional Counsel (RCA)
U.S. Environmental Protection Agency
J.F.K. Federal Building
Boston, MA 02203

Dear Mr. Fowley:

This is to confirm our telephone conversation of December 1, 1997 regarding the applicability of the federal land disposal restrictions (40 CFR 268) to management of Massachusetts universal wastes as defined in the Massachusetts hazardous waste regulations at 310 CMR 30.1000.

The Massachusetts Department of Environmental Protection (MADEP) recently promulgated regulations governing the management of universal wastes (310 CMR 30.1000). In addition to the three categories of waste originally defined as universal waste by the federal universal waste rule at 40 CFR 273 (i.e., batteries, pesticides, and thermostats), the MADEP included two other categories of waste in its universal waste rule: mercury-containing devices and mercury-containing lamps. Pursuant to Subpart G of 40 CFR 273, an individual state may add new waste types not originally included in 40 CFR 273 at the time it develops its own universal waste rule.

It is my understanding that the land disposal restrictions at 40 CFR 268 do not apply to any category of "Universal Waste" defined at 310 CMR 30.1010 during the time that the waste is managed by "Universal Waste Handlers" as defined in 310 CMR 30.1010. Compliance with the land disposal restrictions at 40 CFR 268 only becomes mandatory at the time that any category of universal waste is subsequently managed by a "Destination Facility" as defined in 310 CMR 30.1010.

Please contact me at 781-849-1800 extension 1278 if you disagree with my summation of our conversation.

Yours truly,

Peter W. Egan
Corporate Compliance Manager

cc: James Patterson, MADEP

cc (1) Casey Cosbie
(1) Suzanne Power

FY '98

S. Leetch, EPA

Massachusetts Highway Department
Central Artery/Tunnel

December 1, 1997

Mr. Kevin McSweeney
Associate Director of Waste Policy
U.S. Environmental Protection Agency - Region I
John F. Kennedy Federal Building
Boston, MA 02203

Subject: Central Artery/Tunnel (CA/T) Project
Proposed Treatment Process for Toxicity Characteristic (TC) Soil

Dear Mr. McSweeney:

As indicated in the enclosed approval letter from the Massachusetts Department of Environmental Protection (DEP), dated September 2, 1997, the CA/T Project recently conducted a pilot study on a process to treat soil which would otherwise require disposal as RCRA hazardous waste due to failure of the Toxicity Characteristic (TC) Leaching Procedure for Lead. The treatment process in question involves applying and mixing a liquid reagent with the TC-soil in order to reduce the leachability of metals by crystal mineralization. The pilot study, which was conducted on 250 cubic yards of TC-lead excavate, was overseen by Camp Dresser & McKee, Inc. (CDM), as the environmental consultant to the CA/T Project. The study successfully demonstrated that all of the TC-lead levels were reduced to well below the regulatory limit of 5 mg/l.

The CA/T Project is aware that EPA has not delegated authority under RCRA to DEP to regulate the federal requirements for TC-waste and, therefore, the proposed treatment of TC-soil is subject to both federal and state oversight. As such, staff from the CA/T Project (i.e., Massachusetts Highway Department and Bechtel/Parsons Brinckerhoff), CDM, and DEP met with EPA on September 8, 1997 to discuss the general requirements of the treatment permitting process under RCRA. Since this meeting, the CA/T Project has evaluated numerous options for implementing the proposed treatment process and has identified two general scenarios which conform to the procurement and contracting requirements of the Project. It is the interpretation of CDM that these two treatment scenarios, which are described in detail below, are both exempt from the RCRA permitting process.

As directed by Mr. Gary Gosbee of EPA at the meeting of September 8th, we are writing to officially inform your office of the CA/T Project's intention to implement the treatment of TC-Lead soil on a Project-wide basis based on the results of our pilot study and the specific details of e two proposed implementation scenarios.

COPY

One South Station • Boston • Massachusetts • 02110 • Phone 617-951-6000 • Fax 617-951-0897

It is important to note that CDM's evaluation of the regulatory impacts of the treatment process is consistent with the "area of contamination" (AOC) approach as implemented by DEP for the CA/T Right-of-Way in its management of the Project under the Massachusetts' Superfund Program (c. 21E/MCP) as described in the May 21, 1997 DEP/MHD Memorandum of Understanding (MOU, a copy of which is attached. As you are aware, treating the CA/T Right-of-Way as a single AOC was discussed between DEP and EPA during the early stages of the Project and was agreed upon as a prudent soil management practice. Further, DEP concurs with the treatment proposals described below and will oversee characterization, transportation, and disposal of all CA/T soil, including treated soil, per standard practice for the CA/T Project.

Scenario 1 - Treatment of Confirmed TC-Soil In Situ

Under Scenario 1, the treatment process will be used on in-situ soil that has previously been confirmed as exceeding, or potentially exceeding, the regulatory limit for TC-lead. The liquid reagent will be applied to the surface of the contaminated area to treat lifts of 18" to 24" deep. Because the treatment process occurs almost instantaneously upon application of the reagent, as the treated soil is excavated it is not considered a RCRA waste. As each lift is removed, it will be stored on-site within the CA/T Project Right-of-Way (i.e., the AOC). In cases where there is a sufficient stockpile area, the material will be placed on and covered by polyethylene sheeting in the area directly adjacent to the excavation. In cases where there is no stockpile area, the treated soil will be transported in lined truck trailers over a designated truck route to a central CA/T storage location within the AOC under a DEP approved Internal Material Transport Record (IMTR) process. At the central storage location, the soil will either be stored in watertight containers or in stockpiles which are on and covered by polyethylene sheeting. Even though the treated soil is not a RCRA waste, management of the soil stockpile will be consistent with the November 1993 Compliance Plan (copy enclosed) approved by DEP. The soil will then be analyzed for disposal and/or reuse purposes in accordance with the testing requirements indicated in the May 9, 1997 MOU, which includes testing for total and TC metals. After testing is complete, all treated material will be transported to an appropriate off-site disposal/reuse facility under a DEP-approved Bill-of-Lading.

Massachusetts Highway Department
Central Artery/Tunnel

December 1, 1997

The CA/T Project, with DEP's concurrence, intends to implement the proposed treatment process on TC-Lead soil (following Scenario 1 or Scenario 2 as applicable) on a Project-wide basis. If you have any questions regarding the information presented herein or if you disagree with our consultant's interpretation, please contact Ms. Gloria A. Fry of MHD at (617) 951-6132.

Sincerely,

MASSACHUSETTS HIGHWAY DEPARTMENT

for Peter M. Zuk
Project Director

AL-1.7
)97-2395

Enclosures:
1. May 21, 1997 DEP/MHD Memorandum of Understanding
2. DEP Letter Regarding TC-Lead soil Treatment Process, dated 9/2/97
   Compliance Plan for Management of RCRA Hazardous Waste and Potential RCRA Hazardous Waste Soil, CA/T Project

cc: G. Gosbee - EPA
S. Leetch - EPA
S. Lipman - DEP
J. Carrigan - DEP
C. Wasserman - DEP

COPY

December 1, 1997

As discussed previously, it is our environmental consultant's interpretation that a permit is not required for the treatment process addressed in Scenario 1. Based on the knowledge of the CA/T TC-waste from the treatability study, it is recognized that as the material is excavated it will already have undergone in-situ treatment and will not be a hazardous waste as defined by RCRA.

Scenario 2 - Treatment of TC-Soil in Tanks and/or Containers

Under Scenario 2, the treatment process will be used on excavated soil within the AOC that is confirmed as exceeding, or potentially exceeding, the regulatory limits for TC-Lead. Tthe liquid reagent will be applied to the soil as the soil is being placed in watertight containers (either lined roll-off boxes or lined truck trailers). As discussed earlier, the treatment process will occur in the container almost instantaneously. Therefore, as soon as the soil is treated in a container, it is not considered a RCRA waste. The treated soil will then be transported over a designated truck route to a central CA/T storage location within the AOC under an IMTR and will be stored in the same manner as discussed in Scenario 1. The soil will then be analyzed for disposal and/or reuse purposes in accordance with the testing requirements indicated in the May 9, 1997 MOU, which includes testing for total and TC metals. After testing is complete, all treated material will be transported to an appropriate off-site disposal/reuse facility under a DEP-approved Bill-of-Lading.

Again, it is our environmental consultant's interpretation that a permit is not required for the treatment process addressed in Scenario 2. As described above, the process will be conducted on-site in containers, in accordance with applicable federal regulations. It is acknowledged that the treatment must also conform with the requirements of 40 CFR. Based on the knowledge of the CA/T TC-waste from the treatability study, it is concluded that no soil will be moved outside of the AOC until treatment is complete and the soil no longer meets the definition of a RCRA waste.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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October 6, 1997

Anthony Reed, EH&S Manager
Pioneer Plastics
1 Pionite Road
P.O. Box 1014
Auburn, ME 04211-1011

Dear Mr. Reed:

Recently, Ken Rota of my staff, received a telephone call from Frank Conti, a representative for American International Group (AIG), the insurer for Pioneer Plastics Corporation (Pioneer). Mr. Conti inquired about Pioneer's current regulatory status as it pertains to the distillate treatment tank and fume incinerator in operation at the facility. According to Mr. Conti, representatives from Pioneer informed him that this unit was a totally enclosed treatment system. I am writing to tell you that, based upon our inspection of your facility last year, we informed Mr. Conti that EPA does not consider this process to be a totally enclosed treatment process. Both Ken Rota and Kate Anderson, a senior environmental scientist and national expert, at EPA Headquarters in Washington D.C. reviewed the process information last year and determined that the system is not totally enclosed as designed and operated. Our office discussed this determination with Richard Hall, the former Environmental Health and Safety Manager for Pioneer and Bruce Nicholson, the attorney representing Pioneer in this matter.

As the new corporate environmental manager, I believe it is important that you have accurate information to assist you in your regulatory endeavors at Pioneer. To briefly provide you with some background concerning this matter, EPA conducted a partial inspection at Pioneer on April 29, 1996, to review the design and operation of the distillate treatment system and Thermo-Oxidizer used on-site. This inspection was based, in part, on schematic drawings of the distillate treatment system provided by Pioneer that indicated that this unit was operating as and subject to the Boiler and Industrial Furnace (BIF) regulations. At the time of the April inspection, EPA determined that the schematics were incorrect and observed that Pioneer had modified the resin production operation in a manner that removed the volatile organic constituents during the production phase of the manufacturing process and not as part of a waste treatment process as indicated on the schematics. This modification occurred several months prior to EPA's April inspection. During the time period prior to this process modification, Pioneer would have been subject to the BIF regulations since the volatile organic emissions burned at that time were derived from the treatment of hazardous wastes collected in the distillate tank and not as a result of gaseous emissions removed directly from the production process. However, as a result of the process change, Pioneer eliminated this obligation. Gaseous emissions removed directly from the production process and not as a result of waste treatment processes are not regulated under RCRA.

As a separate point, note that the totally enclosed treatment advisory opinion rendered by the Maine Department of Environmental Protection's Air and Hazardous Materials and Solid Waste Control

Bureau is not correct. This determination is based on our physical inspection of the treatment system. The Maine DEP informed EPA that their decision had been based upon written representations made by Pioneer and was not a result of any physical walk-through of the facility by their office that could have confirmed the accuracy of the information contained in Pioneer's regulatory interpretation request letter.

During Mr. Hall's tenure as the Corporate Environmental Health and Safety Manager, a followup letter was written to EPA dated July 12, 1996 by Mr. Nicholson. This letter contained information that my office was requesting about the processes conducted at Pioneer. Included with this letter were Mr. Nicholson's interpretations of regulations as he felt they applied to Pioneer's operations. The letter raised issues regarding whether the distillate treatment system was totally enclosed treatment and the applicability of the Land Disposal Restriction (LDR) regulations to the waste distillate. Neither this letter nor the information submitted by Mr. Nicholson has changed EPA's position in this matter.

The Agency feels that the language of the regulations and existing regulatory interpretations are clear with respect to Pioneer's regulatory obligations. However, to provide closure in this matter I will address the applicability of the LDRs regulations to your distillate wastes after neutralization. It is our position is that the waste distillate is subject to the LDR regulations. Although the treatment of this corrosive waste occurs in a tank from which no land disposal occurs, this material is further treated on-site in the Thermo-Oxidizer and produces an ash that is collected and land disposed at a Subtitle D facility. The LDR regulations are applicable to solid waste by statute. Therefore, an LDR determination for the waste distillate is necessary to determine whether this ash might contain hazardous constituents requiring further treatment prior to disposal. This situation is no different than when hazardous wastes manifested off-site for treatment, both characteristic and listed, are required to have LDR determinations accompanying LDR notifications to ensure that both the wastes and any resulting residues receive adequate treatment prior to land disposal.

The July letter also referenced the September 25, 1992 decision of the U.S. Court of Appeals in Chemical Waste Management v. EPA, 976 F.2d 2 (D.C. Cir. 1992). Specifically, your attorney referenced a situation in which LDR wastes were treated in tanks and discharged directly to surface waters or to Publicly Owned Treatment Works (POTWs) and stated that the court determined that such treatment was not subject to LDRs since no land disposal occurred. Mr. Nicholson suggested that EPA should view the neutralization of Pioneer's corrosive waste in its distillate tank in the same manner. We do not consider this situation to be analagous to Pioneer's activity since there is an important distinction that should be recognized by the court's decision. Specifically, the surface water discharges and discharges to POTWs referenced by the court in the case are regulated by EPA under the authority of the Clean Water Act. In Pioneer's particular situation, although no "disposal" occurs during the neutralization process, the further treatment of this waste by the Thermo-Oxidizer results in an ash that is a solid waste still regulated under RCRA. This ash, unlike the water discharges referenced in the court case above, is land disposed. Despite this distinction, no evidence of underlying hazardous constituents was found in the waste analysis information provided to EPA for the neutralized distillate that might require further treatment.

Good luck in your new duties as corporate environmental manager. If you have any further questions in this matter, please call Ken Rota of my staff at (617) 565-3349.

Sincerely,

Suzanne M. Parent, Chief
RCRA Compliance Unit

cc: Bruce Nicholson, Erler and Powers
Michael Hudson, ME DEP

Compendium

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

September 22, 1997

Franklin D. Sales, Vice President
Consolidated Recycling, Inc.
P.O. Box 1233
Amherst, NH 03031

Re: Fluorescent lamp storage

Dear Mr. Sales:

This letter is in response to your letter of August 7, 1997, in which you request approval or acknowledgment of the fluorescent lamp storage requirements of Consolidated Recycling, Inc. (the "facility"), a proposed recycling facility to be located in Fitchburg, Massachusetts. In that letter you indicate that the facility would need to store fluorescent lamps for at least 10 days or 240 hours. You indicate that this storage time is necessary in order to compensate for transit time and consolidation of lamps in various parts of the United States. This would result in the storage of approximately 220,000 lamps or 5 tractor-trailer loads. The letter also states that the facility will be applying for a Class C Recycling permit upon promulgation of the Universal Waste Rules of the Commonwealth of Massachusetts in the very near future.

Under currently effective federal hazardous waste regulations the storage of hazardous waste for 10 days without a RCRA Part B storage permit is not acceptable. EPA-New England maintains the position that the continued establishment of environmentally sound recycling processes should be supported. Lamps that are stored for 10 days prior to being processed have a greater probability of breakage resulting in the discharge of hazardous waste to the environment and an increased likelihood of human exposure to mercury. The EPA has previously reviewed a similar facility operation where the storage of lamps does not occur. EPA indicated in that situation that an accumulation time period of 48 hours as allowed by MADEP under their Class C Recycling permits for the off-loading, inspection and processing of fluorescent lamps for recycling is an appropriate amount of time.

On May 11, 1995 (60 FR 25492), the Agency promulgated the Universal Waste Rule (UWR). The rule creates a framework for, among other things, the collection of several categories of hazardous waste for recycling. The streamlined regulatory requirements apply to hazardous waste batteries, certain pesticides, and mercury-containing thermostats. The UWR also creates a procedure for states to add additional wastes, such as mercury-containing lamps, to the previously listed hazardous wastes. The UWR is currently not effective in Massachusetts. However, our understanding is that the MADEP will apply to operate the UWR during 1997, and it is our hope that EPA will be able to promptly approve its application. We also anticipate that Massachusetts will simultaneously be applying for approval to administer the Toxicity Characteristic (TC) Rule, thus enabling the State to treat fluorescent lamps as universal waste. However, we do not anticipate that approval of the UWR will change the requirements for recyclers. That is, 10 days storage at a recycling facility will continue to require a RCRA Part B storage permit.

Under Section 3006 of the Resource Conservation and Recovery Act (RCRA), EPA may authorize qualified states to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA, although authorized states have primary enforcement responsibility. The Hazardous and Solid Waste Amendments of 1984 (HSWA) were established to significantly expand the scope and requirements of RCRA. New requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out HSWA requirements until the State is granted authorization to do so. The TC rule is a HSWA requirement. Prior to HSWA, a State with a final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Universal Waste Rule is a non-HSWA rule and is therefore not effective in an authorized State until they receive authorization from EPA.

We hope the above answers your questions. Should you have any additional questions please contact me at (617)565-3559 or Gary Gosbee at (617)565-3725.

Sincerely,

Edward K. McSweeney
Associate Director of Waste Policy

cc: Steven A. DeGabriele, Director, MADEP
Bill Sirull, MADEP
Gary Gosbee, EPA-OEP
Suzanne Parent, EPA-OES
Jeff Fowley, EPA-ORC
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Supervising Engineer, RIDEM
S. Ladner, Supervisor, Bureau of Remediation & Waste Management, MEDEP
S. Simoes, Waste Management Division, VTDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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July 25, 1997

Mr. P. Howard Flanders, Director
Waste Management Division
Vermont Department of Environmental Conservation
103 South Main Street/West Building
Waterbury, VT 05671-0404

Re: Contained-In Waste Determination, Windsor School Site, Windsor, Vermont

Dear Mr. Flanders:

I am pleased to respond to the letter of June 18, 1997 in which you request EPA's assistance for a "contained-in" determination for media contaminated with an F032 waste. As you explained in your letter, Vermont has not yet adopted the F032 waste listing in its Hazardous Waste Management Regulations and cannot make a "contained-in" determination for this particular waste as outlined in an EPA OSWER policy letter dated September 15, 1995. The letter states in part that "In order to make contained-in determinations, a State must only be authorized for the part of the base program under which the waste of concern is identified as hazardous". The OSWER letter outlines the parameters for making a contained-in determination in most situations.

On July 9, 1997, a meeting was held between representatives of VTDEC and EPA to discuss the issues concerning the Windsor site remediation approach and to clarify the wastes to be included in the contained-in determination. A follow-up correspondence dated July 14, 1997 was received from George Desch of your office that summarized the proposed remediation approach, proposed cleanup standards, and the wastes to be included in the contained-in determination.

Site Information

Based on information provided, the site was the location of the former Windsor State Prison in Windsor, VT and is currently owned by the Windsor School District. Contamination at the site was discovered in August 1995. The contaminated media at the site contains pentachlorophenol (PCP), dioxin, and kerosene compounds. The contamination resulted from wood preserving activities (log dipping tanks) which occurred at the former State Prison. The logs were dipped in mixture of PCP and kerosene. The dioxin is presumed to be a co-contaminant resulting from the manufacture of the PCP. Contaminants are contained in groundwater, subsurface and surface soils, and a soil pile which was generated during construction of the school located near the site.

Since the discovery of the contamination, VTDEC has overseen a Remedial Investigation (RI), Risk Assessment (RA), and Corrective Action Feasibility Investigation (CAFI) at the site. A summary of the site investigation as well as a proposed remedial plan for the contaminated soil and cleanup standard has been developed for the site and is discussed below.

The site investigation results indicated that the highest levels of contaminants found at the site was 910,000 ppb (parts per billion) for PCP and 9001 ppt (parts per trillion) for dioxin. The area with the highest contamination levels has been fenced off. The soil pile is located southeast from the fenced off area. The existing soil pile has low levels of dioxin and PCP in it. The soil pile is estimated to contain 2,000 cubic yards of soil. The contaminant levels in the soil pile averaged 45 ppb PCP and 220 ppt TEQ dioxin, with a maximum concentration of 200 ppb PCP and 501 ppt TEQ dioxin, respectively.

Based on discussions between staff members of VTDEC and EPA, it was determined that for purposes of the Contained-In Waste Policy, a direct contact standard of 1 ppb TEQ for dioxin is acceptable as a soil cleanup standard. This value is based on the EPA's default risk value for dioxin contaminated soils and equals a risk for residential exposure of 10E-4. The VTDEC indicated at the meeting that this value is acceptable.

The preliminary efforts by VTDEC on the site specific SESOIL and AT123D modeling indicated a soil cleanup level for pentachlorophenol (PCP) of between 0.6 and 2.5 ppm at two different compliance points down gradient of the contaminated soil area. These results are based on removing all soils above this value in order to improve groundwater contaminant levels to below MCLs within the next 70 years if no other remedial approach is implemented to improve groundwater quality in a shorter time frame. Currently, using only natural attenuation of groundwater, groundwater is predicted to remain contaminated above MCLs for many hundreds of years, perhaps even a thousand. Based on the results of this modeling, the conditions at the site, and the detection limit of laboratory and field lab equipment, a proposed cleanup standard of 1 ppm for PCP in soil was agreed upon. Therefore, the proposed remedial standard for PCP in unsaturated soil and long term improvement of groundwater quality is 1 ppm.

The proposed remediation plan includes removing all soils above the proposed cleanup standards of 1 ppb TEQ dioxin and 1 ppm PCP and disposing of these soils at an EPA permitted hazardous waste facility. This includes removing soils in the fenced off "hot spot" area of approximately 80 by 120 feet down to 2 feet, and an area of approximately 60 feet by 60 feet with a depth down to approximately 12 feet. This amount of soil represents an estimated volume of 2,000 cubic yards to be removed and disposed of at a hazardous waste landfill.

Since groundwater is at an average depth of 6 feet below ground surface, groundwater will need to be withdrawn from the ground to make excavation easier and to lighten the weight of the soil. The groundwater will be pumped from the ground and treated before

Contained-In Policy Determination

Its our determination that unsaturated soils and groundwater at the Windsor site will be considered to no longer contain F032 hazardous waste providing the following occur.

1. The proposed remedial standards of 1 ppb TEQ dioxin and 1 ppm PCP are implemented in the proposed remediation plan which is outlined above.

2. The F032 waste soils above the remedial standards of 1 ppb TEQ dioxin and 1 ppm PCP generated from this remediation plan and sediments generated from the groundwater pump and treatment processwill be disposed at a hazardous waste facility that is in compliance with Federal and State regulations.

3. Soils from the existing soil pile and from the excavation that are found to be below the remedial standards of 1 ppb TEQ dioxin and 1 ppm PCP may be placed back into the excavation and are located below a two foot minimum clean fill soil cap. The soil cap with a minimum thickness of two feet of clean fill from off-site will be placed on top of the excavated area. The VTDEC will make provisions to ensure that the integrity of this soil cap is maintained.

4. Fugitive emissions generated during the remediation process will be properly controlled.

5. Appropriate institutional controls are to be placed in the land records that will control groundwater exposures, future development and restricted the use of this site.

If you should have any questions concerning the contents of this letter, please do not hesitate to contact Betsy Davis of the Vermont State Unit at (617) 565-3481, Stephen Yee of the Hazardous Waste Program Unit at (617) 565-3550, or me at (617) 565-3559.

Sincerely,

Kevin McSweeney, Associate Director
Waste Policy
Office of Ecosystem Protection

cc: George Desch, VTDEC
Peter Marshall, VTDEC
Lynne Hamjian, EPA
Matt Hoagland, EPA
Gary Gosbee, EPA
Patricia Meaney, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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June 3, 1997

Stephen E. Pozner, Senior Vice President
Global Recycling Technologies, Inc.
387 Page Street
Stoughton, MA 02072

FLUORESCENT LAMPS
Re: Regulation of mercury bearing lamps

Dear Mr. Pozner:

This is in response to your letter of February 4, 1997, in which you request a written response from EPA, Region I on two particular questions. The following constitutes Region I's response to those questions.

Your first question states: "Can mercury bearing lamps, that fail the TCLP analytical test for mercury, be shipped from the site of generation to an off-site facility that does not meet the definition of 'designated facility' (40 CFR 260.10)?"

The answer to your question is no, hazardous wastes shipped from the site of generation must be manifested to a designated facility. However, the designated facility may be a recycling facility, not just a treatment, storage or disposal facility.

Hazardous waste determinations are the responsibility of the person who generates solid waste following the procedures outlined in 40 CFR § 262.11. The regulations at 40 CFR Part 262, Subpart B state that generators of hazardous waste shipping waste off-site must prepare a manifest which indicates the final destination of the waste (the designated facility). A designated facility is defined at 40 CFR § 260.10 as

> ".... hazardous waste treatment, storage, or disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of 40 CFR, (2) has received a permit (or interim status) from a State authorized in accordance with Part 271 of 40 CFR, or (3) is regulated under section 261.6(c)(2) or Subpart F of part 266 of 40 CFR, and (4) that has been designated on the manifest by the generator pursuant to section 260.20[sic (262.20)]. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste".

Your second question is as follows: "Does the U.S. EPA consider 'crushing' mercury bearing lamps (that fail TCLP test for mercury) at an off-site facility, who then ships the crushed mercury contaminated powder/glass to a third party for distillation, a 'recycler' as defined in 40 CFR § 261.6(c)?"

The answer to your question is yes, if the crushing operation is part of a legitimate recycling process where no storage or disposal occurs and the mercury contaminated powder/glass is shipped to a third party for distillation. However, an off-site facility which crushes mercury bearing lamps and then manifests the hazardous waste to a permitted treatment, storage or disposal (TSD) facility would be considered a treatment facility treating hazardous waste and therefore would be subject to regulation under 40 CFR § 264.

Hazardous wastes that are recycled are defined by EPA as recyclable materials and are subject to the requirements for generators, transporters, and storage facilities. EPA considers mercury-bearing lamps which are recycled to be recyclable materials. A material is recycled if it is used, reused or reclaimed (see 40 CFR §261.1(c)(7)). Legitimate recycling processes are not subject to RCRA Subtitle C regulation under 40 CFR § 261.6 (c) except as noted in 40 CFR § 261.6(d). (See letter dated 7/28/93 from Jeffery D. Denit, Acting Director, OSW to Mr. D.B. Redington, Monsanto Company).

Of course, the sole act of crushing lamps would not be considered full recycling, the material would then need to be used, reused or reclaimed. In order for a facility doing crushing to maintain a claim that they are a recycler of recyclable materials, it must document what materials are being recycled and that its process is a legitimate step towards recycling. The facility must maintain the records that are necessary to substantiate that full recycling of the material ultimately is occurring, as specified at 40 CFR §261.2(f).

Generators and transporters of recyclable materials are subject to the applicable requirements of 40 CFR part 262 and 263 and the notification requirements of section 3010 of RCRA. Owners and operators of facilities that recycle recyclable materials without storing them before they are recycled are also subject to the notification requirements of section 3010 of RCRA. They are also subject to the requirements of 40 CFR §§ 265.71 and 265.72, which deal with the use of a manifest and manifest discrepancies, and the requirements of 40 CFR § 261.6(d), which states that facilities otherwise subject to the permitting requirements of RCRA that have hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of 40 CFR part 264 or part 265.

On May 11, 1995 (60 FR 25492), the Agency promulgated the Universal Waste Rule (UWR). The rule creates a framework for, among other things, the collection of several categories of hazardous waste for recycling. The streamlined regulatory requirements apply to hazardous waste batteries, certain pesticides, and mercury-containing thermostats. The UWR also creates a procedure for states to add additional wastes, such as mercury-containing lamps, to the previously listed hazardous wastes.

The UWR is currently not effective in Massachusetts. However, our understanding is that the MADEP will apply to operate the UWR during 1997 and it is our hope that we will be able to promptly approve its application. We also anticipate that Massachusetts will simultaneously be applying for approval to administer the Toxicity Characteristic (TC) Rule, thus enabling them to treat fluorescent lamps as universal waste. Global Recycling Technologies should carefully review the Massachusetts requirements when they are adopted in order to determine the applicability of the requirements to Global's operations.

EPA-New England maintains the position that the continued establishment of environmentally sound recycling processes should be supported. We hope the above answers your questions. Should you have any additional questions please contact me at 617-565-3559 or Gary Gosbee at 617-565-3725.

Sincerely,

Edward K. McSweeney
Associate Director of Waste Policy

Enclosure

cc: Steven A. DeGabriele, Director, MADEP
Bill Sirull, MADEP
Gary Gosbee, EPA-OEP
Suzanne Parent, EPA-OES
Jeff Fowley, EPA-ORC
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Supervising Engineer, RIDEM
S. Ladner, Supervisor, Bureau of Remediation & Waste Management, MEDEP
S. Simoes, Waste Management Division, VTDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FILE COPY

JUL 28 1993

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. D. B. Redington
Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167

Dear Mr. Redington:

Thank you for your letter of March 30, 1993, in which you urged the agency to provide an exemption from the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations for fluorescent lamps. You also requested that the agency clarify the regulatory status of crushing fluorescent lamps to recover mercury values. In your letter, you discuss "the need to crush bulbs as the first step toward shipment of the materials to a recycler." You expressed concern that crushing of fluorescent lamps might constitute treatment.

With regard to exempting fluorescent lamps from EPA's hazardous waste regulations, the Agency is currently considering various options for regulating the management of spent lamps. We expect to complete this analysis soon and then publish the selected approach in the Federal Register for public comment. We would very much welcome your comments on that proposal. In the meantime, the following provides guidance on the current regulatory status of crushing of fluorescent lamps.

Generally, recycling of hazardous wastes would be defined as treatment under 40 CFR 260.10. Legitimate recycling processes, however, are not subject to RCRA Subtitle C regulation under 40 CFR 261.6(c) except as noted in 40 CFR 261.6(d). If crushing fluorescent lamps that fail the toxicity characteristic is a necessary part of a legitimate recycling process, it would not be subject to RCRA Subtitle C regulatory requirements except as specified in 40 CFR 261.6(d). The crushing activities may occur at the generator's facility, or at the recycler's facility and remain exempt under 40 CFR 261.6(c). You should be aware that any storage of crushed lamps that fail the toxicity characteristic still would be subject to RCRA Subtitle C regulation (e.g., 40 CFR 262.34 for generator accumulation or 40 CFR Part 264 for other storage).

Also note that spent fluorescent lamps contain a small amount of elemental mercury as well as mercury that is bound to the phosphor powder found inside the bulb. The Agency has little data on the potential hazard of mercury releases from bulb breakage or crushing but we are concerned that crushing may

present a hazard to worker safety. In our proposal regarding the management of spent fluorescent lamps (described above), the Agency will be requesting data on the potential hazard of breaking or crushing mercury-containing lamps.

The Occupational Safety and Health Administration (OSHA) sets standards for maximum exposure limits for mercury in the workplace. These standards are found at 29 CFR Part 1910; there may also be applicable State worker safety requirements. You should ensure that the crushing operations comply with applicable occupational and health standards.

Under Section 3006 of RCRA, individual States can be authorized to administer and enforce their own hazardous waste programs in lieu of the Federal program. When a State is not authorized to administer its own program, the appropriate EPA Region administers the program and is the appropriate contact for any case-specific determinations. Please also note that under Section 3009 of RCRA, States retain authority to promulgate regulatory requirements that are more stringent than Federal regulatory requirements.

If you have questions about how the recycling and storage requirements apply to your specific activities, you should contact the State agency (or EPA regional office in a State not authorized to administer the RCRA program) for a site-specific determination.

If you have further questions about RCRA Subtitle C regulatory requirements, please contact Charlotte Mooney or Ann Codrington of my staff at (202)260-8551. If you have questions about the proposal regarding the management of spent fluorescent lamps, contact Valerie Wilson at (202)260-4770. Thank you for your interest in the safe recycling of hazardous waste.

Sincerely,

Jeffery D. Denit
Acting Director,
Office of Solid Waste

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

APR 28 1997

Paul A. Ahearn, Director
Regulatory Compliance
Clean Harbors Environmental Services, Inc.
325 Wood Road
P.O. Box 327
Braintree, MA 02184

Re: Corporate Restructuring

Dear Mr. Ahearn:

This is in response to your letter of January 20, 1997, regarding your request for a regulatory interpretation from EPA-New England regarding the Clean Harbors, Inc. (CHI) restructuring program to consolidate several of its wholly-owned subsidiary companies into a single operating entity and its effect on the state of the Federal hazardous waste permit. According to your letter, CHI will be consolidated into a single operating unit known as Clean Harbors Environmental Services, Inc. (CHESI). CHESI currently operates the Clean Harbors fleet of licensed hazardous waste transporters, several waste oil companies, and other related activities. The restructuring program will include one Massachusetts-based facility, Clean Harbors of Natick, Inc. (the facility), which currently holds an EPA-issued HSWA permit.

The regulations which pertain to changes or transfers of the owner or operator of a facility are found at 40 CFR §§ 270.40 and 270.42. The regulations, in essence require that when there is a change in the facility owner or operator the permit must be modified or revoked and reissued to identify the new owner prior to the transfer of ownership. The regulations allow the change to occur by way of a Class 1 modification with prior written approval of the Director (see 40 CFR§ 270.42, Appendix I, A.7.). It is our understanding that Clean Harbors believes that this corporate restructuring does not constitute a "change of ownership" and views this change as a modification which does not require prior written approval.

Based on the information submitted in the January letter and in a subsequent phone conversation you had on March 5, 1997, with Sharon Leitch, of my staff, EPA believes that a Class 1 modification with prior Agency approval would be necessary. In that conversation you indicated that under the current structure, there are separate operators (i.e. CHNI) operating under one company (CHI). Clean Harbors intends to consolidate all operations into one company (CHESI). EPA feels that the restructuring does affect the status of the ownership of the facility and therefore has concluded that

the change would require a Class 1 modification with prior Agency approval.

In accordance with the regulations at 40 CFR § 270.40(b) the facility must submit to the Director a revised permit application which indicates the new owner or operator no later than 90 days prior to the scheduled change, include documentation indicating the date when the change will take place, indicate that the 40 CFR part 264, subpart H requirements (Financial Requirements) are complied with under the old structure and submit documentation to demonstrate that the requirements will be met under the new structure (CHESI). This demonstration of compliance with the subpart H requirements must be made within 6 months of the date of the change of ownership of the facility.

Clean Harbors should submit a request for a Class 1 permit modification which includes the information responsive to the above requirements (see 40 CFR 270.40(b)) as soon as possible. Upon receipt of the request and following internal review of the information to be submitted the Region will issue a prompt response.

This interpretation only applies to the HSWA portion of the facility permit issued by EPA. You must contact each New England state in which CHESI/CHI has operations to determine if there are provisions which differ from EPA's and may affect the state-issued portion of the permit.

If you have any questions, please do not hesitate to contact me at (617) 565-3725. You may also contact Sharon Leitch, of my staff, at (617)565-4879.

Sincerely,

Gary B. Gosbee, P.E., Chief
Hazardous Waste Program Unit

cc: K. McSweeney, Associate Director of Waste Policy, EPA
M. Hoagland, Chief, RCRA Corrective Action Unit
S. Parent, Chief RCRA Enforcement Unit, EPA
J. Fowley, Atty., ORC-EPA
A. Nardone, Licensing & Permitting, MADEP
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Supervising Engineer, RIDEM
S. Ladner, Supervisor, Bureau of Remediation & Waste Management, MEDEP
S. Simoes, Waste Management Division, VTDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

January 28, 1997

Christopher T. Lloyd, Director
NYNEX
Environmental Operations
125 High Street, Room 1040
Boston, MA 02110

Re: Manhole Sediment Stabilization Process

Dear Mr. Lloyd:

This is in response to your letter of September 13, 1996, regarding your request for a regulatory interpretation from EPA New England and for New England wide "approval" for the NYNEX in-line stabilization process for removing and treating sediment from NYNEX manholes. We apologize for the delay in responding to your request, the nuances surrounding the issue and our desire to maintain coordination with the six New England states have added to the delay. While EPA is not in a position to "approve" the treatment process we do offer the following regarding the regulatory implications.

We are aware of the complexity of the situation in which NYNEX finds itself, particularly the need to deal with this issue throughout the New England states and are willing to work with NYNEX in order to facilitate a productive outcome. While the Region supports any process which enhances protection of human health and the environment we are limited in our authority to make a definitive decision regarding this issue. Since each of the New England states are authorized for the RCRA base program, which includes determinations regarding identification and generation of hazardous waste, they maintain the authority to make more stringent regulatory interpretations relating to your situation.

As we understand the situation, NYNEX conducts emergency service operations for its underground cable network. Manholes are typically used to provide access to the underground equipment serviced by NYNEX. According to NYNEX, sediments may accumulate in this underground system over time and, in the course of its emergency operations, require immediate removal. Analytical testing of these sediments conducted by NYNEX has shown that these sediments may, on occasion, exhibit the toxicity characteristic for lead. NYNEX cannot attribute the lead to any single identifiable source. EPA suspects that the potential

sources of this lead may be due to historical use of leaded gasoline, lead stabilizers contained in telephone cable plastics, etc.

In your letter to EPA, NYNEX identified a process developed for the treatment of the potentially lead-contaminated sediment that may be removed during an emergency service operation. The treatment process described in your letter involved the use of a vacuum truck as the primary method for removing the sediments from the manhole. In NYNEXs process description, two 55-gallon drums are connected "in-line" between the vacuum truck and a section of hose containing the vacuum nozzle. The 55-gallon container closest to the nozzle is used to accumulate the sediments removed during emergency clean out. The purpose of the second 55-gallon container is to provide an emergency backup for the first container in case sediments, accumulated in first container, exceed the capacity of the drum. A schematic of the process shows the hose, used to transfer the potentially lead-contaminated sediments from the manhole into that 55-gallon container, is also used to concurrently transfer the lead treatment chemical into the same accumulation container via a "T" connection in the line. NYNEX provided waste analyses of the sediment that is accumulated in the 55-gallon "in-line" accumulation container after treatment was conducted. The analytical results for this treated waste found that the toxic characteristic for lead was no longer exhibited and the sediment was rendered non-hazardous (less than 5 ppm of leachable lead).

We are aware of NYNEX's need for expedience in dealing with the sediment in emergency service situations. We realize that the sediment in each manhole, of which there are approximately 70,000 throughout the New England states, does not necessarily need to be removed nor does it always exhibit the toxicity characteristic (TC) for lead but that certain service needs do not allow for the turn-around time necessary for testing at each manhole. Therefore, NYNEX currently handles all sediment as a hazardous waste when it is removed from the manholes on an emergency basis and intends to treat this sediment by the above referenced process. Non-emergency service needs do allow for the time necessary to make hazardous waste determinations and therefore, in these situations, only hazardous sediment removed from the manholes would be treated.

Generally, the regulatory implications for a process where a facility treats hazardous waste are that the facility must obtain a RCRA Part B permit unless the treatment process is excluded from permitting requirements or the waste is entirely excluded from regulation under Subtitle C. The applicable federal RCRA regulations include the identification and listing of hazardous wastes, generator and treatment regulations, and land disposal restrictions (LDR), 40 CFR Parts 261, 262, 264 and 268,

respectively.

As indicated above, the sediment contains lead which may be found at levels that would constitute it as a hazardous TC waste. The TC rule was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and therefore is implemented by EPA in all states until such time that the states become authorized for the rule. The state of Vermont is currently the only New England state authorized for the TC rule. However, the Commonwealth of Massachusetts will be seeking authorization during 1997. The implications of this on the NYNEX situation would be that if the process is deemed to need a RCRA Part B permit because of the TCLP test, EPA would be the permit issuing authority in states that do not have TC authorization.

The possible exclusion from permitting which may apply to your process is found in 40 CFR § 264.1, which states that the requirements of Part 264 - Standards for owners and operators of hazardous waste TSDFs, do not apply to:

> A generator accumulating waste on-site in compliance with 40 CFR § 262.34. In connection with such accumulation, the EPA also has determined that permits are not required for generators treating their hazardous wastes in the generators' tanks or containers in conformance with the requirements of § 262.34 and Subparts I or J of Part 265. See 51 Fed. Reg. at 10168 (March 24, 1986), and 40 C.F.R. § 268.7(a)(4).

EPA believes that your process may qualify for the federal RCRA exclusion for generators accumulating and treating waste on-site. In order to qualify for this exemption from the permitting requirement, the waste must be treated by the generator and stored for no more than 90 days. This appears to be your plan. In addition, the waste must be treated within tanks or containers as defined in 40 C.F.R. § 260.10. Your system as described in your correspondence appears to fall within these definitions. Finally, all parts of your system involved in storing and treating the waste must meet the requirements of 40 C.F.R. § 262.34 and 40 C.F.R. Part 265, Subparts I or J, and Subparts AA, BB, and CC. In order to be excluded from the permitting requirement, you need to ensure that all of these requirements are met.

Assuming that you do qualify for the exemption from permitting, you must still meet all applicable generator requirements. In removing any soil which is a hazardous waste, you are considered to be generating a hazardous waste, even if it is then rendered non-hazardous by your treatment. The applicable requirements include obtaining an EPA ID number as the generator of a hazardous waste. 40 C.F.R. § 262.12.

In addition, while the stabilized sediment will be non-hazardous if it does not fail the Toxicity Characteristic, it still must meet all applicable land disposal restrictions (LDR). The current LDR treatment standard for lead for this type of waste is 5.0 mg/l TCLP. As a generator treating wastes subject to LDR, you also will be required to develop and follow a written waste analysis plan pursuant to 40 C.F.R. § 268.7(a)(4).

Although an EPA permit will not be required for the in-line stabilization process if you meet the requirements stated above, you are reminded that individual state regulations may be both more stringent and broader in scope than the EPA regulations. Therefore, you will need to contact each state for a determination regarding its views on the regulatory status of the in-line stabilization process. Since all of the New England states are authorized for the base RCRA program, which includes sections 261, 262, and 264 of 40 CFR, they maintain the authority to make more stringent determinations regarding exclusions.

In summary we believe for reasons previously discussed that an EPA hazardous waste permit will not be required for the above activity if you meet the requirements discussed above. However, NYNEX will be subject to federal generator requirements, including LDR requirements, and also should contact each New England state to determine if there are provisions that are more stringent or broader in scope than EPA's.

If you have any questions regarding this or any other issue, please do not hesitate to contact me at (617) 565-3725. You may also contact Sharon Leitch, of my staff, at (617)565-4879.

Sincerely,

Gary B. Gosbee, P.E., Chief
Hazardous Waste Program Unit

cc: K. McSweeney, Associate Director of Waste Policy, EPA
S. Parent, Chief RCRA Enforcement Unit, EPA
J. Fowley, Atty., ORC-EPA
A. Nardone, Licensing & Permitting, MADEP
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Supervising Engineer, RIDEM
S. Ladner, Supervisor, Bureau of Remediation & Waste Management, MEDEP
S. Simoes, Waste Management Division, VTDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

January 13, 1997

Steven DeGabriele, Director
Division of Hazardous Materials
Massachusetts Department of Environmental Protection
One Winter Street, 7th Floor
Boston, MA 02108

Re: Cellini Purification Systems

Dear Mr. DeGabriele:

The purpose of this letter is to inform you of an issue regarding EPA and State interpretations of RCRA regulations. The attached memo discusses this issue which was raised at a meeting, at the request of the MADEP Innovative Technologies program, with the EPA and MADEP RCRA programs, the MADEP Industrial Wastewater section, and the EOEA on November 21, 1996, regarding Cellini Purification Systems.

Cellini Purification Systems has been working with the State through the Strategic Envirotechnology Partnership (STEP) program. A result of the STEP process was an examination of potential regulatory barriers to the application of the Cellini Controlled Atmospheric Separation Technology (CAST) system. One of the possible barriers identified was the differing EPA and MADEP interpretations of exemptions from RCRA permitting.

EPA has had two meetings with the MADEP and EOEA at which the issues were highlighted and proposed solutions developed. EPA's role at these meetings was to provide the federal regulatory interpretation of the RCRA permitting exemptions as they may apply to the Cellini system. The attached memo discusses those interpretations.

Since each of the New England states are authorized for the RCRA base program they maintain the authority to make more stringent regulatory interpretations. Individual state regulations may be both more stringent and broader in scope than the EPA regulations. Therefore, while the attached memo discusses the federal RCRA interpretation of the relevant regulations, its application may vary in individual states.

Should you have any questions regarding this memo, please contact me at (617)565-3559. You may also contact Sharon Leitch of the Hazardous Waste Program unit at (617) 565-4879 regarding any technical issues associated with this memo or Jeffry Fowley of the Office of Regional Council at (617)565-1475 regarding any legal issues.

Sincerely,

Edward K. McSweeney
Associate Director of Waste Policy
Office of Ecosystem Protection

enclosure

cc: Gary Gosbee, Chief, Hazardous Waste Program Unit, EPA
Jane Downing, Chief, Massachusetts State Program Unit, EPA
Suzanne Parent, Chief, RCRA Technical Unit, EPA
Jeff Fowley, Office of Regional Council, EPA
Jim Michael, PSPD, EPA-HQ
Kathy Nam, OGC, EPA-HQ
Gina McCarthy, EOEA
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Jim Miller, MADEP
Stephen Brown, Cellini Purification Systems, Ludlow, MA
John Duclos, NHDES
David Sattler, CTDEP
Steve Simoes, VTDEC
Leo Hellested, RIDEM
Stacy Ladner, MEDEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

MEMORANDUM

DATE: January 13, 1997

SUBJ: RCRA Permitting Exemption For "Zero-Discharge" System Manufactured by Cellini Purification Systems

FROM: Jeffry Fowley, Lead RCRA Attorney, ORC Region I

TO: Gary Gosbee, Chief, Hazardous Waste Program Section

NON-CONFIDENTIAL: MAY BE DISTRIBUTED TO STATE AND COMPANY

I. Introduction

The Commonwealth of Massachusetts is working with five other states to encourage the use of innovative technologies. One of the identified technologies is the Controlled Atmospheric Separation Technology™ ("CAST System") developed by Cellini Purification Systems of Ludlow, Massachusetts. The CAST System will sometimes be used to recycle water and eliminate all wastewater discharges at manufacturing facilities. The State has asked for the Region's view regarding whether the CAST System could be exempted from RCRA permitting when used in this manner. The five possible scenarios for using the CAST System without wastewater discharges are shown (labeled ## 1-5) in the diagram attached to this Memorandum. The State has pointed out that treatment units which have wastewater discharges often are exempted from RCRA permitting pursuant to the "wastewater treatment unit" exemption set out in 40 C.F.R. §§ 264.1(g)(6) and 270.1(c)(2)(v). The State has pointed to an alleged "Catch 22" if the RCRA permitting exemption is lost when the environmentally beneficial step is taken of eliminating all wastewater discharges.

II. Wastewater Treatment Unit Exemption

The State has suggested that even when the CAST System is utilized so that there are no wastewater discharges, the "wastewater treatment unit" exemption should apply. See 40 C.F.R. § 264.1(g)(6). However, this exemption would not apply if the CAST System was installed in a new manufacturing facility that had never had a discharge regulated under the Clean Water Act. As the EPA clarified in the Federal Register, the exemption applies to certain ongoing operations which produce "no treated wastewater effluent as a direct result" of Clean Water Act requirements, but "is not intended to apply" to treatment units at facilities that "are not required to obtain an NPDES permit." 53 Fed. Reg. 34080-34081 (Sept. 2, 1988). See also Letter from Sylvia K. Lowrance, Director, EPA Office of Solid Waste to Thomas

W. Cervino, P.E., Colonial Pipeline Company, dated January 16, 1992, RCRA Compendium # 9522.1992(01) ("If there was never a discharge to surface waters, then the exemption criteria is not satisfied").

I have not examined whether the wastewater treatment unit exemption would apply to even all uses of the CAST System in existing facilities, since that exemption does not apply in any event to new facilities and thus does not address the State's desire to exempt the CAST System from RCRA permitting across-the-board. Moreover, I need not decide to what extent the wastewater treatment unit exemption might apply since, as explained below, I believe the State's concerns can be addressed in the particular case of the CAST System by use of the "totally enclosed treatment" exemption.[1]

III. Totally Enclosed Treatment Exemption

The EPA's regulations exempt totally enclosed treatment facilities from RCRA permitting. 40 C.F.R. §§ 264.1(g)(5), 270:1(c)(2)(iv). "Totally enclosed treatment facility" is defined in 40 C.F.R. § 260.10. The State similarly exempts "treatment integral to the manufacturing process" from RCRA permitting, and defines that term in 310 CMR § 30.010.

EPA Engineer Sharon Leitch of the Region's Hazardous Waste Program section and I have examined the following documents regarding the CAST System: (i) Report to EPA on Environmental Technology Initiative Grant, by Massachusetts Department of Environmental Protection, entitled "Zero-Discharge Regulations: Evaporation and Distillation of Industrial Wastewater," Case Study no. 3; and (ii) Memorandum from Stephen Brown, Cellini Purification Systems, Inc. to Sharon Leitch, dated December 18, 1996 ("Cellini Submission") [copy attached]. Assuming that all of the representations contained in those documents are accurate, and subject to the caveats set forth below, the CAST System appears capable of meeting all of the requirements to be considered totally enclosed treatment, when used in the scenarios labeled as ## 1-5 in the diagram attached to this Memorandum:

1. A totally enclosed treatment facility must be "directly connected to an industrial production process." 40 C.F.R. § 260.10. As shown in the diagram attached to this Memorandum, scenarios ## 1-5 all envision the use of the

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[1] Since I believe that the State's concerns can be resolved under the "totally enclosed treatment" exemption, I also am not examining under which scenarios the CAST System would be considered to be closed-loop recycling under 40 C.F.R. § 261.4(a)(8).

CAST System in a manner directly connected to a manufacturing process. In the Cellini Submission, the company has confirmed that it is intended that the CAST System be connected with the manufacturing operation entirely by closed pipes.

2. A totally enclosed treatment facility also must be "constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment." 40 C.F.R. § 260.10. As explained in EPA's Guidance entitled "Totally Enclosed Treatment Facility: Regulatory Clarification," RCRA Compendium # 9432.1983(01) ("Totally Enclosed Guidance"), several requirements must be met to pass this test. First, the treatment facility must be completely contained on all sides. In the Cellini Submission, the company has confirmed that this is how the CAST System is designed. Second, there must be no predictable potential for overflows and spills. For example, the system's tanks and pipes must be made of impermeable materials. The use of such impermeable materials and the many other protections against leaks and spills employed in the CAST System are documented in the attached Cellini Submission.

Finally, the system must be constructed to prevent air emissions. As confirmed in the Cellini Submission, the CAST System is designed to have no air emissions. It has no vented emissions and "CAST systems operate under nearly a full vacuum and hence do not produce any fugitive emissions." Cellini Submission, page 2.

Of course, there is always some possibility, however slight, of leaks and fugitive emissions, from any system. For example, when the CAST System is operated so as to create a product or waste (scenarios ## 2-5 on attached diagram), there could be fugitive emissions when the product or waste is removed from the system. These emissions, however, do not come directly from the treatment operation itself. In any event, while the totally enclosed treatment system exemption has been interpreted narrowly, some carefully designed systems can fall within its terms. The CAST System appears capable of meeting the test that there be "negligible potential" for emissions set forth in the EPA's "Totally Enclosed Guidance," page 7, as well as the more recently expressed tests that the system be designed not to have air emissions and be constructed and operated so as to prevent the release of hazardous constituents "not only on a routine basis but also during a process upset." 55 Fed. Reg. 25454, 25473 (June 21, 1990).

CAVEATS:

1. In this Memorandum, I am simply determining that the CAST System appears capable of meeting the tests for the totally enclosed treatment system exemption. Obviously, the manner in which this system is installed will determine whether or not the system qualifies as a totally enclosed treatment system in any particular case. For example, if the system was installed without being directly connected to an initial generator's manufacturing process, or was installed without being completely contained, the exemption would not apply. Whether the exemption will apply in any particular case also will depend on the how the system is operated. For example, the exemption could be lost if at a particular manufacturing plant, the system was not properly maintained or there were not effective protections against spills.

2. In this Memorandum, I am not addressing the State DEP's proposal to consider as totally enclosed, systems which have some air emissions but which meet a three part test of (i) having emission control devices which effectively prevent emissions, (ii) having in place a properly implemented leak detection program, and (iii) being in facility-wide compliance with all air requirements, including fugitive emission requirements.
I also am not addressing the State's Environmental Results Program ("ERP") proposal to exempt from RCRA permitting certain facilities with up to 5 tons per year of air emissions.
I need not reach these issues in this Memorandum, since the CAST System appears capable of meeting the tests for the totally enclosed treatment exemption as traditionally defined.
The Region intends to work with the State on an ongoing basis on these other issues.

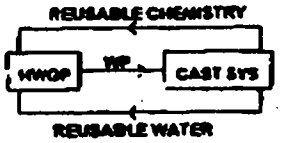
3. It should be emphasized that the totally enclosed treatment exemption is an exemption only from RCRA permitting for the treatment system. Other RCRA requirements will continue to apply. For example, if the CAST System generates a hazardous waste, RCRA generator requirements will apply, including manifesting if the waste is shipped off-site.

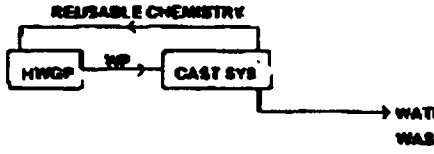
POSSIBLE CAST SYSTEM INSTALLATIONS

CAST SYS = CONTROLLED ATMOSPHERE SEPARATION TECHNOLOGY SYSTEM
WP = WASTE PRODUCT
HWGP = HAZARDOUS WASTE GENERATING PROCESS

no installations / fear of reopening permit

#1





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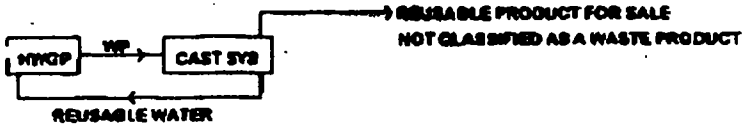

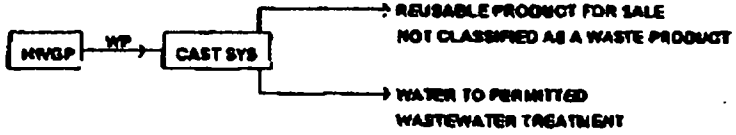

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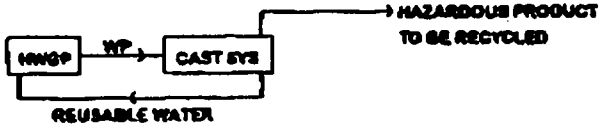

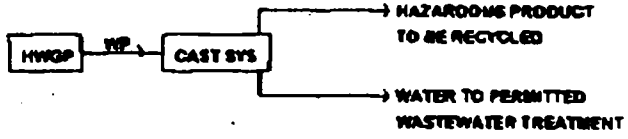

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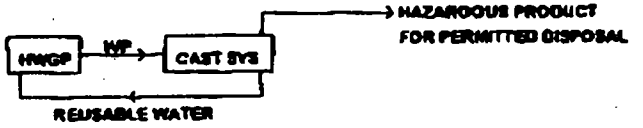

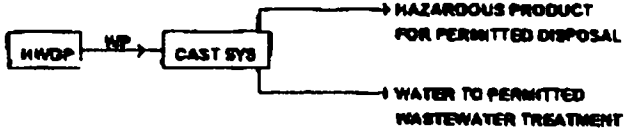

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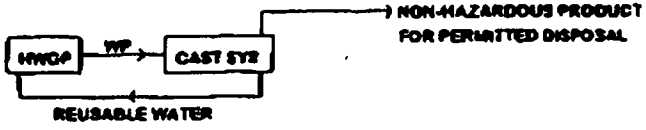
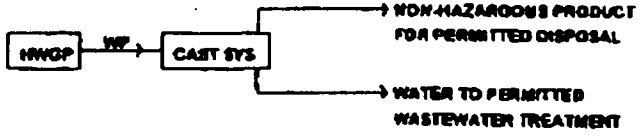




NOTES:
1. CAST SYSTEMS UTILIZE VACUUM ASSISTED FLASH DISTILLATION
2. CAST SYSTEMS DO NOT DISCHARGE ANY PRODUCT TO THE AIR
3. CAST SYSTEMS DO NOT EVAPORATE WATER INTO THE ATMOSPHERE
4. CAST SYSTEMS CAN BE USED WITH OTHER TYPES OF TREATMENTS TO RECOVER PRODUCTS FOR REUSE OR RECYCLING
5. CAST SYSTEMS CAN BE USED WITH OTHER TYPES OF TREATMENT TO RENDER PRODUCTS NON-HAZARDOUS
6. IN MOST CASES, CLIENTS HAVE PERMITTED WASTE TREATMENT IN ADDITION TO CAST SYSTEMS; other wastes treated or other hazardous waste generated. All have permits.

FAX TRANSMISSION SHEET

CELLINI PURIFICATION SYSTEMS INC.
290 MOODY STREET
LUDLOW, MA. 01056-1244
(413) 589-1601
FAX (413) 589-7301
E-mail: cellini@worldnet.att.net

To: Ms. Sharon Leitch, US EPA

Date: December 18, 1996

From: Mr. Stephen Brown, CPS

Re: Follow up on your FAX .

Page: 1 of 3

Dear Sharon,

I hope that the following explanation is sufficient to answer the questions raised by the FAX you sent and our phone conversation.

- CAST™ systems are completely hard piped. All piping is welded, solvent bonded or fusion bonded to prevent leakage. All connections are flanged or fitted with unions. All flange gaskets and union o-rings are constructed from TFE, Viton, Kel-Rez or similar corrosion resistant elastomers. All pipe, fittings, vessels, etc. are constructed of CPVC, FRP, 316 SS or similar corrosion resistant materials. All pumps, heat exchangers and instruments are constructed of 316 SS, titanium, Hastelloy or similar corrosion resistant materials. The actual materials utilized are a function of the specific process chemistry and are very carefully selected to provide years of safe, corrosion/erosion resistant service.

x

- Piping connecting a CAST™ system to a manufacturing process is always hard piped in an appropriate material. The pipe runs are always maintained within secondary containment. In most cases, this type of containment consists of a walled in sealed floor area. Double containment piping may be used if warranted.

x

- CAST™ systems have no vents.

x

- CAST™ systems can be connected directly to the existing manufacturing process tanks. In some instances, flow equalization tanks may be used. These tanks are always covered and constructed from an appropriate material. The solutions contained in these tanks are existing process solutions or water which will be reused in the manufacturing process.

x

- CAST™ systems are primarily marketed as closed loop resource recovery systems which do not produce waste products. However, CAST™ systems are also used to recover water for reuse while reducing the overall volume of waste product generated by a manufacturing process. In this instance, the reduced quantity of waste is pumped through hard pipe to an approved container. The waste is taken off site by a licensed waste treatment/management source for recycle or approved disposal.

x

- All tanks and vessels contained within a CAST™ system or connected to a CAST™ system are fitted with over flow piping, process level monitoring and HI/LOW shut down floats. Tank over flow piping is connected to appropriate storage tanks or licensed/approved waste treatment systems. All tanks and vessels contained within a CAST™ system or connected to a CAST™ system are fitted with appropriate isolation valves, drain valves, access ports and sight glasses.

x

- CAST™ systems are fitted with redundant temperature, pressure, liquid level and power controls. These controls interface with the CAST™ system's electronic package. The operation of the system is fully automatic and completely fail-safe in nature. CAST™ systems are fitted with automatic isolation valves which isolate the individual sub-systems contained within the CAST™ system. Additionally, these valves are designed to prevent the accidental discharge of process solution in the event of a mechanical failure. CAST™ systems are also fitted with manually operated service valves which allow an operator to selectively isolate components for cleaning or maintenance without exposing the remaining system to atmosphere. All CAST™ system operations can be manually overridden in the event of a control system problem.

- CAST™ systems operate under nearly a full vacuum and hence do not produce any fugitive emissions.

CPS would be very pleased to have you and any of your colleagues visit our plant. We currently have a small system on the shop floor which can be made available for inspection. Please feel free to call me to arrange a visit or if you have any other questions or comments. We at CPS look forward to developing a close working relationship with both the US EPA and MA DEP, and would gladly cooperate with you in any way possible. I look forward to hearing from you. Thank you.

Sincerely,

Stephen H Brown

PS Visit our Web Site at http://www.cellinicps.com

Policy Compendium

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 11, 1997

Mr. J. R. Hebert
Manager, Regulatory Affairs
Maine Yankee
320 Bath Road
Brunswick, Maine 04011

Mixed Waste

Dear Mr. Hebert:

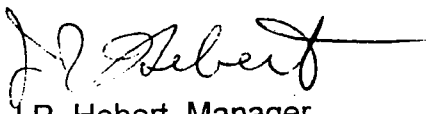
Thank you for your letter of July 21, 1997 in which you requested that Maine should adopt the reduced civil enforcement policy promulgated in 61 FR 18588, April 26, 1996. Your letter did not request EPA to hold up or deny authorization, or to take further comment. Below we address the three issues you listed in your letter; however, we would point out that the concerns you expressed should be resolved between Maine Yankee and the State.

1. The reduced enforcement policy of 61 FR 18588: The Hazardous and Solid Waste Amendment (HSWA) Section 3004(j) prohibits storage of land disposal prohibited wastes (including mixed waste) except "for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal." Recognizing that treatment and disposal options were not available for certain mixed waste prohibited from land disposal under the Land Disposal Restrictions, the EPA initiated a policy on the civil enforcement of the storage prohibition in Section 3004(j). (56 FR 42730, August 29, 1991) This policy treated violations of section 3004(j) as reduced priorities among the EPA's potential civil enforcement actions. The policy stated that generators may be capable of storing their mixed waste for the limited duration of the policy, if they pursued prudent waste management practices. On April 26, 1996, the EPA extended the policy until April 20, 1998. (61 FR 18588) This Federal Register is very explicit in stating that the policy extension applies only to those waste streams for which no treatment technology or disposal capacity is available. The policy also states that when, during the limited term of this policy, treatment and disposal options become available, facilities must use them to be in compliance with Section 3004(j). The Maine Department of Environmental Protection (ME DEP) advised us that in the past Maine Yankee routinely sent its waste for treatment or disposal within 90 days.

The Federal Register notice also states that this policy is not binding on states with authorization for the LDR since they have independent authority to enforce LDRs and section 3004(j). Therefore, Maine, knowing the universe of its regulated community, can determine its own approach to this policy in its goal of protecting human health and the environment.

Maine Yankee appreciates the opportunity to comment on this final rule. We trust that you and MDEP will consider these comments in connection with your authorization of MDEP to regulate mixed waste handling. Please contact John Arnold, telephone (voice mail): 207-798-4213, fax: 207-798-4230, Internet (e-mail) arnold@myapc.com, if you have questions or comments.

Very truly yours,



J.R. Hebert, Manager
Regulatory Affairs

c: S. Ladner, MDEP

generated in all areas of the plant including the radiation control area.

Maine Yankee is, however, concerned that proposed application of MDEP's hazardous waste rules to hazardous components of mixed waste may have the unintended consequences of increasing MDEP regulatory effort and regulated community expense with no real environmental, public health and safety, or regulatory benefit.

The issues underlying this concern are:

1 Imposition of the 90 day shipment requirement on all mixed waste is unworkable
2 MDEP's greater hazardous waste regulation stringency makes mixed waste treatment and disposal potentially more complicated.
3 MDEP has not adopted EPA's policy of reduced enforcement for some mixed waste handling, Reference (b)

Each of these issues and a suggested solution are discussed below.

1 Mixed waste needs be stored on site at the plant for longer than 90 days for two reasons: as indicated in Reference (b) treatment or disposal for certain mixed wastes streams is unavailable and where it is available the quantity of mixed waste generated and the distance of Maine Yankee from these treatment facilites makes shipment of the wastes every 90 days prohibitively expensive.

2 As pointed out in Reference (a) MDEP's program is more stringent than EPA's in several areas. These areas of greater stringency could increase the volume of material which is classified as mixed waste. This increased volume could further overtax existing limited mixed waste treatment facilities where they are available and increase the amount of mixed waste held in storage where they are not. Specifically MDEP lists about 65 additional chemical products as hazardous wastes including PCBs that EPA does not list as hazardous waste. Maine Yankee knows of no licensed mixed waste treatment facilities for these additionally listed wastes.

3 In Reference (b) EPA acknowledged the unavailability of mixed waste treatment and disposal facilities for certain low volume mixed wastes generated at commercial nuclear power plants and extended a reduced enforcement policy for these wastes streams provided that certain conditions are met. MDEP has neither adopted this policy nor promulgated a similar policy.

Maine Yankee anticipates that its environmental staff can work with the MDEP staff on a case by case method to address these issues. MDEP should, however, adopt a policy similar to EPA's in Reference (b). This adoption would ensure that a statutory framework exists to permit both the regulator and regulated community the flexibility needed to utilize the most environmentally advantageous solution to each mixed waste stream.

Maine Yankee
RELIABLE ELECTRICITY SINCE 1972

329 BATH ROAD • BRUNSWICK, MAINE 04011 • (207) 798-4100

July 21, 1997
JRH-97-177

Ms Geri Mannion
U.S. EPA Region 1, (CHW)
J.F.K. Federal Building
Boston, MA 02203-2211

Subject: Comments on Maine's Program Revision Application: Mixed Waste Authorization

References: (a) 62 FR 34007, June 24, 1997, Maine; Final Authorization of State Hazardous Waste Management Program
(b) 61 FR 18588, April 26, 1996, Extension of the Policy on Enforcement of RCRA Sec. 3004(j) Storage Prohibition at Facilities Generating Mixed Radioactive/Hazardous Waste
(c) Maine Yankee Atomic Power Company, Wiscasset, Lincoln County, Maine, Hazardous Waste Treatment Facility Under Abbreviated License Provisions, License #O-000159-HL-A-N

Dear Ms. Mannion:

Maine Yankee is pleased to offer the following comments on EPA's authorization of the Maine Department of Environmental Protection's regulation of mixed waste.

Reference (a) authorizes the State of Maine's Department of Environmental Protection (MDEP) to regulate several clusters of hazardous waste regulations. One included cluster, Non-HSWA Cluster III, includes regulation of Radioactive Mixed Waste. Maine Yankee Atomic Power Company (Maine Yankee) is a commercial nuclear fueled electricity generating facility (the plant) located in Wiscasset, Maine. Maine Yankee is a Large Quantity Generator of hazardous waste which also generates low volumes of mixed wastes. Maine Yankee has handled and disposed of these wastes in accordance with EPA and MDEP regulations. Based on this experience, Maine Yankee offers these comments on the authorization of MDEP to regulate mixed waste.

Maine Yankee has established an effective working relationship with the MDEP staff responsible for mixed waste regulation. Maine Yankee has kept these specialists informed through dialog and periodic reports of mixed waste handling activities and obtained an Abbreviated License, Reference (c) for depressurization of aerosol cans

2. Imposition of the 90-day shipment requirement on all mixed waste is unworkable: The 40 CFR 262 generator requirements limit accumulation of hazardous waste on-site to 90 days without a storage permit and the need to follow the treatment, storage, and disposal regulations of 40 CFR 264 and 265. Maine's generator regulations, like the EPA's, also grants an extension (via a temporary license) of 30 days for unforeseen, temporary circumstances. In your reference to 61 FR 18588, April 26, 1996, you noted that storing mixed waste for more than 90 days is necessary because treatment technologies or disposal facilities are unavailable. Please note that 61 FR 18588 is a policy for reduced enforcement for violations of 3004(j) that would occur when facilities stored their mixed waste beyond 90 days for reasons other than proper recovery, treatment or disposal. You also noted that storing mixed waste for more than 90 days is necessary because, when treatment or disposal facilities are available, the cost of shipping off-site every 90 days is expensive. Section 3004(j) does not address the expense of disposal as a reason for storing wastes beyond 90 days. Therefore the reduced enforcement policy for civil enforcement of violations of 3004(j) as promulgated should not be read as a policy to extend the 90-day shipment requirement on the basis of expense.

3. Regulatory Stringency: The Resource Conservation and Recovery Act (RCRA) Section 3009 and 40 CFR 271.1(i) address a State's ability to promulgate rules that are more stringent and broader in scope than the Federal regulations. The EPA authorized Maine to implement specific provisions of its hazardous waste program in lieu of the EPA in 1988. At that time, Maine included PCB's and the other Maine-listed wastes in its regulations. Based on our conversations with ME DEP, we understand that Maine Yankee has not experienced difficulties in seeking treatment technologies or disposal availability for the mixed waste that it generates. If situations arise, in which a facility could not secure treatment or disposal availability for its mixed waste, the facility should work with ME DEP on a case-by-case basis.

We examined your comments in light of the basic standards that a State hazardous waste program must meet in order to qualify for final authorization and for authorization of program revisions. As Maine meets the standards for equivalency and because the reduced civil enforcement policy is not binding on states authorized for LDR, we intend to go forward with our determination to approve Maine's application.

We hope our comments on the above prove a satisfactory response to the questions you raise. If you have any additional questions, please feel free to contact Geri Mannion of my staff at (617) 565-3607.

Sincerely,

Gary B. Gosbee, P.E.
Manager, Hazardous Waste Program Unit

cc: Geri Mannion, EPA
Jeffry Fowley, EPA
Steve Silva, EPA
Stacy Ladner, ME DEP